

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 20-0494V

UNPUBLISHED

DORA BEGAY, personal
representative of ESTATE OF
VINCENT BEGAY,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: March 16, 2023

Special Processing Unit (SPU); Joint
Stipulation on Damages; Influenza
(Flu) Vaccine; Shoulder Injury
Related to Vaccine Administration
(SIRVA)

Leigh Finfer, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Claudia Barnes Gangi, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON JOINT STIPULATION¹

On April 23, 2020, Vincent Begay filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Mr. Begay alleged that he suffered a right shoulder injury related to vaccine administration (“SIRVA”) caused in fact by the influenza (“flu”) vaccine he received. Petition at 1, ¶¶ 2, 15. Stipulation, filed at Mar. 16, 2023, ¶¶ 1-2, 4. He further alleged he received the vaccine within the United States, that he suffered the residual effects of his injury for more than six months, and that neither he nor any other party has filed a civil action or received compensation for his alleged SIRVA injury. Petition at ¶¶ 15-16; Stipulation at ¶¶ 3-5. After Mr. Begay passed away from an unrelated cause, Dora Begay – his wife and personal representative of his estate, was designated as Petitioner

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

in this case. ECF Nos. 31-32. “Respondent denies that Mr. Begay sustained a SIRVA Table injury; and denies that the flu vaccine caused Mr. Begay’s alleged shoulder injury, any other injury, or his subsequent death.” Stipulation at ¶ 6.

Nevertheless, on March 16, 2023, the parties filed the attached joint stipulation, stating that a decision should be entered awarding compensation. I find the stipulation reasonable and adopt it as my decision awarding damages, on the terms set forth therein.

Pursuant to the terms stated in the attached Stipulation, **I award** the following compensation:

A lump sum of \$12,000.00 in the form of a check payable to Dora Begay, as personal representative of the estate of Vincent Begay. Stipulation at ¶ 8. This amount represents compensation for all items of damages that would be available under Section 15(a). *Id.*

I approve the requested amount for Petitioner’s compensation. In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties’ joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

DORA BEGAY, personal
representative of the Estate of
VINCENT BEGAY,

Petitioner,

v.

SECRETARY OF
HEALTH AND HUMAN SERVICES,

Respondent.

)
)
)
)
)
) No. 20-494V

) Chief Special Master Brian Corcoran
)
)
)
)
)

STIPULATION

The parties hereby stipulate to the following matters:

1. Vincent Begay ("Mr. Begay") filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program"). Upon his death, his wife Dora Begay ("petitioner"), as personal representative of his estate, was substituted as petitioner herein. The petition seeks compensation for injuries allegedly related to Mr. Begay's receipt of the influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).

2. Mr. Begay received a flu vaccine on or about October 25, 2018.

3. The vaccine was administered within the United States.

4. Petitioner alleges that Mr. Begay sustained a shoulder injury related to vaccine administration ("SIRVA") within the time period set forth in the Table following administration of the flu vaccine. She further alleges that he experienced the residual effects of this condition

for more than six months. Petitioner does not assert that Mr. Begay's death was a sequela of his alleged vaccine injury.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of Mr. Begay's condition or his death.

6. Respondent denies that Mr. Begay sustained a SIRVA Table injury; and denies that the flu vaccine caused Mr. Begay's alleged shoulder injury, any other injury, or his subsequent death.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payment:

A lump sum of **\$12,000.00** in the form of a check payable to petitioner as legal representative of the estate of Vincent Begay. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and her attorney represents that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable

under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

11. Payment made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as the legal representative of Mr. Begay's estate under the laws of the State of New Mexico. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing petitioner's appointment as legal representative of Mr. Begay's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as legal representative of the estate of Mr. Begay at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as legal representative of the estate of Mr. Begay upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as personal representative of Mr. Begay's estate, on her own behalf, and on behalf of the estate of Mr. Begay, and his heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could

be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of Mr. Begay resulting from, or alleged to have resulted from, the flu vaccination administered on October 25, 2018, as alleged by Mr. Begay in a petition for vaccine compensation filed on or about April 23, 2020, in the United States Court of Federal Claims as petition No. 20-494V.

14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

15. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further that a change in the items of compensation sought, is not grounds to modify or revise this agreement.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that Mr. Begay sustained a SIRVA Table injury; or that the flu vaccine caused any other injury or his death.

17. All rights and obligations of petitioner hereunder in her capacity as personal representative of Mr. Begay's estate, shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

Respectfully submitted,

PETITIONER:



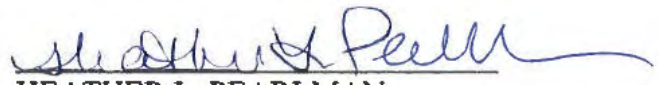
DORA BEGAY

**ATTORNEY OF RECORD FOR
PETITIONER:**



LEIGH A. FINFER
MULLER BRAZIL, LLP
715 Twining Road, Suite 208
Dresher, PA 19025
(215) 885-1655
Email: leigh@mullerbrazil.com

**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**



HEATHER L. PEARLMAN
Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146

**AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:**

Henry P. Digitally signed by
Henry P. Mcmillan -S3
Date: 2023.03.08
16:31:02 -05'00'
by McMillan -S3
CDR GEORGE REED GRIMES, MD, MPH
Director, Division of
Injury Compensation Programs
Health Systems Bureau
Health Resources and Services
Administration
U.S. Department of Health
and Human Services
5600 Fishers Lane, 08N146B
Rockville, MD 20857

**ATTORNEY OF RECORD FOR
RESPONDENT:**



CLAUDIA B. GANGI
Senior Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 616-4138
claudia.gangi@usdoj.gov

Dated: 3-16-23